



Department of Toxic Substances Control

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The Department of Toxic Substances Control (DTSC) will hold an April 5, 2007 workshop to solicit input on the development of regulations for the following topic:

Proposed Regulations for Permit by Rule Authorization for the Office of the State Fire Marshal to Treat Seized Illegal Fireworks in a Mobile Fireworks Treatment Unit: R – 2003 – 16

The following is the "straw proposal" language to be used for the basis of the workshop discussions. In addition to the draft text, please note the two discussion topics annotated in italicized text on pages 1 & 4 of this document.

Section 67450.31. Scope and Purpose.

- (a) Scope. This article applies only to management of fireworks seized, confiscated by or relinquished to a local, state or federal government law enforcement or emergency response agency, pursuant to Health and Safety Code section 12721, when the fireworks are treated in a mobile unit owned and operated by the California Office of the State Fire Marshal (OSFM). This specialized type of permit by rule provides hazardous waste treatment authorization if the activities meet all of the following criteria:

WORKSHOP DISCUSSION POINT: DTSC is considering including local law enforcement and emergency response agencies in the parties that are eligible to treat seized fireworks in an MFTU. The MFTU would have to be demonstrated to be comparable to those to be used by the OSFM, and there would have to be requirements to assure that the local agency coordinates with the OSFM, etc. as well as complying with any emissions limitations and ash disposal issues. Would any local agencies be interested in operating their own unit? Would costs be an issue? Any differences in the regulations to address local agencies would have to be integrated throughout the text, so there is no preliminary text at this time. If the local agency inclusion issue is of interest to you, please come to the workshop prepared to discuss this issue, or submit written comments to address this issue.

- (1) The treatment is conducted by the OSFM or its designee;
 - (2) The treatment activities conducted pursuant to this article are limited to treatment of fireworks classified by the federal Department of Transportation as hazard Class 1.4 (explosives with no significant blast hazard);
 - (3) The treatment is conducted in a Mobile Fireworks Treatment Unit (MFTU), that meets the applicable criteria specified in section 67450.33(a), and that is owned and operated by the OSFM. An MFTU means a unit that meets and is operated in accordance with the criteria specified in sections 67450.31 and 67450.33 of this chapter.
- (b) The requirements of this article do not apply to any fireworks management activities undertaken by the OSFM or its designee, if those activities are an immediate response exempt from the requirement for a permit pursuant to Cal. Code Regs., tit. 22, sections 66264.1(g)(8)(A), 66265.1(d)(11)(A) or 66270.1(c)(3)(A).

Section 67450.32. Notification Requirements.

- (a) The OSFM shall be deemed to have a permit by rule for an MFTU for the treatment of fireworks when the OSFM complies with subsections (b), (c), (d), (e) and (f) of this section, as applicable, and receives an acknowledgment from the Department authorizing operation of the MFTU as required by subsection (c) or (e).
- (b) The OSFM shall submit to the Department, in person or by certified mail with return receipt requested, a notification of intent to operate an MFTU. The notification shall consist of a completed Fireworks Treatment Permit by Rule Notification Form (DTSC Form 1445).
- (c) Within thirty (30) calendar days of receipt of a notification submitted pursuant to subsection (b) of this section, the Department shall acknowledge, in writing, receipt of the notification. The Department may, in conjunction with the acknowledgment, authorize operation of the MFTU subject to the requirements and conditions of this article; deny authorization to operate under a permit by rule; or notify the OSFM that the notification is incomplete or inaccurate and inform the OSFM that additional information or correction(s) is needed. The Department may reject the notification if the OSFM fails to provide the information or correction(s) requested within ten (10) calendar days of receipt of the acknowledgment. Upon good cause shown by OSFM, the Department may grant the OSFM additional time to provide the information or correction(s) requested. If a notification is rejected, the OSFM may submit a new or revised notification.
- (d) Notwithstanding section 67450.3(c)(1), and except as otherwise specified by the Department, the OSFM shall be deemed to have a permit by rule for a MFTU in effect for five (5) years from the date of authorization, as long as the MFTU is operated in compliance with the requirements of this article, and the permit by rule is not amended, revised, revoked, voided or suspended.
- (e) The OSFM may not implement any changes to the MFTU or operation of the MFTU, as specified in section 67450.33, without prior written acknowledgement from the

Department. Prior to implementing any change in the operation of the MFTU as described in the notification required by subsection (b) of this section, the OSFM shall send a revised notification to the Department. If a revised notification is rejected, the OSFM may continue to operate the MFTU under the conditions of the previous notification until a revised notification acknowledgement is received for the proposed changes.

- (f) The OSFM shall remain in compliance with the requirements specified in this article between the time the MFTU commences operation and the time the applicable closure requirements for MFTUs are met.

Section 67450.33. Operating Requirements Applicable to an MFTU Deemed to Have a Permit by Rule.

- (a) Treatment of waste fireworks shall take place only in an MFTU that has been designed, constructed and source tested to comply with all applicable laws and regulations. Specifically, the operation of the MFTU must meet the following criteria:
- (1) The MFTU is enclosed, to prevent discharge of debris and to minimize releases;
 - (2) The air emissions of the MFTU meet the applicable requirements of the air quality management district or air pollution control district in which the MFTU is operating, or the MFTU includes or can be connected with an air pollution control component or device that will allow the unit to operate in accordance with the applicable requirements of the air quality management districts or air pollution control districts in which the unit is operating;
 - (3) The design and operation of the MFTU allow accounting of the quantities of fireworks treated in the MFTU, monitoring of the operating temperature of the unit, and monitoring of the emissions to the air during treatment pursuant to the applicable requirements of the air pollution control district or air quality management district;
 - (4) The OSFM maintains the MFTU, with regular inspections, and repairs or replaces any part(s) of the unit, as necessary to maintain the integrity of the unit and safety of the personnel operating the unit; and
 - (5) The OSFM stores the MFTU, when not in use, in a location secure from access by the public.
- (b) The OSFM's operation of an MFTU deemed to have a permit by rule shall maintain compliance with the applicable portions of the following regulations in chapter 15 of this division:
- (1) Section 66265.11, Identification Number;
 - (2) Section 66265.14 (a), Security, while the MFTU is located at a location where it will conduct treatment of fireworks, the OSFM or its agent shall take whatever measures necessary to prevent public access to the MFTU and fireworks items;

- (3) Section 66265.15, General Inspection Requirements. The MFTU shall be inspected in a frequency necessary to assure the continued safe and effective operation of the MFTU. At a minimum, the MFTU shall be inspected at the beginning and end of each treatment event. The inspection shall include assuring that the MFTU may safely and effectively be operated during the next treatment event;
- (4) Section 66265.16, Personnel Training, and all applicable training specified by the OSFM as a requirement for a Certified Bomb Technician, and any other training determined to be necessary for safe and effective operation of an MFTU;
- (5) Section 66265.17, General Requirements for Ignitable, Reactive or Incompatible Wastes;
- (6) Section 66265.51, Purpose and Implementation of Contingency Plan;
- (7) Section 66265.52, Content of Contingency Plan;
- (8) Section 66265.53, Copies of Contingency Plan. At least one copy of this plan shall be kept with the MFTU, and available for immediate reference throughout the course of any treatment event;
- (9) Section 66265.55, Emergency Coordinator;
- (10) Section 66265.56, Emergency Procedures. At least one copy of this plan shall be kept with the MFTU, and available for immediate reference throughout the course of any treatment event;
- (11) Section 66265.73(a), (b)(1), (b)(4), and (b)(5), Operating Record. At least one copy of this record shall be kept with the MFTU, and available for immediate reference throughout the course of any treatment event;
- (c) The OSFM shall inspect loads of waste fireworks prior to treatment to ensure that the fireworks items to be treated in the MFTU are consistent with the items on which the source testing was conducted, and that non-fireworks items or components are not treated in the MFTU;
- (d) The MFTU shall be operated in a manner that does not exceed the maximum throughput or maximum design capacity of the unit;
- (e) An MFTU shall be operated in accordance with the applicable requirements determined by the local air pollution control district or air quality management district in which the MFTU is being operated. These requirements may include notifications or permits, and may vary from district to district. Documentation of compliance with these requirements shall be maintained as part of the operating record for each MFTU.
- (f) In each location in which treatment is conducted in an MFTU, the unit shall be operated at least fifty (50) feet from the closest property line.

- (g) In each location in which treatment is conducted in an MFTU, the operations shall not be conducted within 1,000 feet of a residential neighborhood, school zone, occupied building or populated area;
- (i) An MFTU shall be operated only during daylight hours, or with artificial lighting sufficient for safe fireworks management and operation of the MFTU;
- (j) Each MFTU shall be operated in accordance with the manufacturer's specifications;
- (k) The residuals remaining in an MFTU after treatment shall be disposed of in accordance with all applicable local, state and federal requirements; and
- (l) Operation of an MFTU shall immediately cease if the unit generates unusual visible emissions or odors. The operation will not be restarted until the source of the malfunction has been identified and corrected.

WORKSHOP DISCUSSION POINT: *DTSC is considering requiring event-specific notifications prior to a treatment event so that DTSC may choose to observe an MFTU in operation. If a pre-event notification system were to be established, DTSC envisions it would be electronic, accessed via the DTSC website, with notification submittable on-line, via cell phone, etc. Following is preliminary text, for discussion purposes:*

- (m) Prior to commencing operation at each treatment event site, the OSFM shall send a site-specific notification to DTSC. That notification shall include, at a minimum, the following information:
 - (1) The number of the MFTU;
 - (2) The name and contact information for the OSFM staff person in charge of the MFTU for this treatment event;
 - (3) The name of the agency requesting the treatment of seized fireworks;
 - (4) The address or description of the treatment site;
 - (5) The estimated start and end dates of the treatment event; and
 - (6) The estimated amount of waste fireworks that will be treated during this event.

If the pre-event notification issue is of interest to you, please come to the workshop prepared to discuss this issue, or submit written comments to address this issue.

67450.34. Recordkeeping Requirements.

- (a) The OSFM deemed to have a permit by rule for an MFTU shall maintain an operating record. The operating record shall be labeled with the identification number for the MFTU that it represents. The operating record shall consist of the following information for each treatment event:
 - (1) Identification of the local, state or federal law enforcement or emergency response agency for which the OSFM treated seized fireworks;

- (2) The address or site description of the specific location where the treatment was conducted;
 - (3) The date or dates when treatment was conducted at each location;
 - (4) The estimated total quantity of fireworks, in pounds, treated during that event;
 - (5) The quantity and disposition of any residuals generated during treatment;
 - (6) Documents necessary to demonstrate that the MFTU was operated in compliance with the requirements of the applicable air pollution control district or air quality management district; and
 - (7) A description of any problems or significant issues that arose during the treatment of the fireworks, and a brief explanation of how the problems were resolved.
- (b) The operating record shall also include the dates and results of each inspection of the MFTU, and a brief description of any repairs or changes made to maintain the MFTU;
 - (c) The operating record shall also include documents showing successful completion of all applicable training received by each OSFM employee, or other persons approved by the OSFM to operate the MFTU.
 - (d) The OSFM shall keep all records required by this section for a minimum period of three years. The record retention period is automatically extended during the course of any unresolved enforcement action regarding the regulated activity or as requested by the Department.

67450.35. Transportation Requirements.

- (a) If fireworks that have been determined to be hazardous wastes must be transported offsite from the location where the determination is made that the items are to be treated in an MFTU, to the location where the treatment will take place, the transportation of these items shall be conducted in accordance with all applicable requirements of Calif. Code of Regs., tit. 22, ch. 12.
- (b) If the OSFM determines that the residuals remaining in the MFTU following treatment are hazardous wastes pursuant to Calif. Code of Regs, tit. 22, chapter 11, the residuals shall be managed in accordance with all applicable requirements of Calif. Code of Regs, tit. 22, ch. 12, No fireworks or fireworks treatment residuals that are hazardous wastes shall be transported in the MFTU.

67450.36. MFTU Closure.

- (a) The OSFM shall, within six months after authorization of an MFTU under PBR, prepare a written closure plan that identifies the steps necessary to perform closure at the end of the active life of the MFTU. When it is determined that an MFTU will no longer be used, the OSFM shall close the MFTU in a manner to ensure that all fireworks and hazardous waste residuals are removed from the unit, and are managed in accordance with applicable requirements; and
- (b) The OSFM shall notify the Department at least fifteen (15) days prior to completion of closure of an MFTU.

67450.37. Revocation, Suspension and Denial of Authorization or Reauthorization, and Operating Restrictions for MFTUs Operating Under Permit by Rule.

- (a) Notwithstanding the provisions of Chapter 21 of this division, the Department may revoke or suspend authorization or reauthorization for any MFTU operating or proposing to operate under a permit by rule as provided in this section. The Department may also deny authorization or reauthorization for an MFTU operating or proposing to operate under a permit by rule as provided in this section. The Department shall base a decision on any one of the factors set forth in section 66270.43(a) or (b) or on Health and Safety Code section 25186 or on a finding that operation of the MFTU in question will endanger human health, domestic livestock, wildlife, or the environment.
 - (1) Notice of revocation, suspension, or denial shall be provided to the OSFM by certified mail with return receipt requested or by personal service.
 - (2) If the OSFM's authorization for an MFTU under a permit by rule is revoked or suspended or is denied authorization or reauthorization, and the OSFM wishes to appeal the revocation, suspension, or denial, the OSFM shall appeal by submitting a letter requesting a hearing within ten (10) days of receipt of notice of revocation, suspension, or denial.
 - (3) All appeal proceedings shall be conducted in accordance with Chapter 5 (commencing with section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.
- (b) Any authorization or reauthorization to operate an MFTU granted pursuant to this article is contingent upon the accuracy of information contained in the notifications required by sections 67450.33(b) and (c). Any misrepresentation or any failure to fully disclose all relevant facts shall render the authorization or reauthorization to operate null and void.